IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

Crl.MC.No. 3613 of 2007()

C.C.NO.290/07 OF J.F.C.M, PALA
CRIME NO.30/2007 OF RAMAPURAM POLICE STATION

PETITIONER: ACCUSED 2 TO 4

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1. LISSY KURIAN @ THRESIA, AGED 55 YEARS,
   W/O. KURIAN, VARAKIPARAMBIL HOUSE,
   ARANGU P.O., THALIPARAMBA, KANNUR DISTRICT.

2. SINOJ BABY, S/O. KURIAN, AGED 27 YEARS,
   VARAKIPARAMBIL HOUSE, ARANGU P.O., THALIPARAMBA,
   KANNUR DISTRICT.

3. KURIAN, AGED 60 YEARS,
   VARAKIPARAMBIL HOUSE, ARANGU P.O.,
   THALIPARAMBA, KANNUR DISTRICT.

BY ADV. SRI.C.P.PEETHAMBARAN

RESPONDENTS: STATE & DEFACTO COMPLAINANT

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1. STATE OF KERALA, REPRESENTING
   S.H.O., RAMAPURAM POLICE STATION, KOTTAYAM DIST.,
   REPRESENTED BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

2. JAINY JOSE, AGED 31 YEARS,
   (BAPTISMAL NAME ROSAMMA), D/O. N.D.JOSEPH,
   NIRAPPATHU HOUSE, AMANAKARA KARA P.O.,
   RAMAPURAM VILLAGE, MEENACHIL TALUK,
   KOTTAYAM DISTRICT.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 03/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3613 of 2007

Dated this the 3rd day of December, 2007

O R D E R

Petitioners are mother in law, brother in law and father in law respectively of the defacto complainant and they face allegations along with husband of the defacto complainant in a prosecution under Section 498 A I.P.C. Final report has already been filed. Cognizance has been taken by the learned Magistrate. The petitioners have not entered appearance so far before the learned Magistrate.

2. Petitioners have rushed to this Court with this petition under Section 482 Cr.P.C with a grievance that they have been unnecessarily arrayed as accused. There is no worthwhile material on which they can be compelled to stand the trauma of trial, it is submitted.

3. A person, against whom there is an unjustified indictment on the basis of a final report filed by the police, has A remedY under law to claim premature termination of the proceedings against him. In every case where premature

termination of proceedings by discharge is a possibility, such indictees cannot be permitted to rush to this Court with a petition under Section 482 Cr.P.C. The law does contemplate a situation, though it must be rare, where an indictment on the basis of a final report may be groundless. In such circumstances, the court provides the safety valve provision in Section 239/240 Cr.P.C where under premature discharge can be claimed by such indictees. Not that this Court does not have jurisdictional competence in an appropriate case to invoke the powers under Section 482 Cr.P.C and quash the proceedings, but certainly such invocation must be in an exceptional and rare case. Having considered the facts and circumstances of this case, I am unable to hold that this case falls under that category of cases where the interests of justice do demand that this Court, without leaving the parties to seek the ordinary relief of discharge under Section 239 Cr.P.C, must take upon its shoulders the burden to go through the entire materials and decide at this stage whether the allegations are groundless and the petitioners deserve to stand trial. That duty must be discharged by the learned Magistrate

and needless to say that if the petitioners are aggrieved by the said decision of the Magistrate, their option to come before this Court to challenge the same in revision shall remain unfettered.

4. The learned counsel for the petitioners submits that if unnecessary insistence were made on the personal appearance of the accused to claim such discharge under Section 239 Cr.P.C, great hardship and loss would result. The petitioners reside 400 k.m away from the court, it is submitted. I am satisfied that considering the peculiar facts and circumstances of this case, there can be a direction to the learned Magistrate not to insist on the personal presence of the petitioners to consider their plea of discharge under Section 239/240 Cr.P.C. The petitioners can appear before the learned Magistrate through counsel. They can raise their plea of discharge under Section 239 Cr.P.C through their counsel. Only if the learned Magistrate, after considering the plea under Section 239 Cr.P.C, is satisfied that charges are liable to be framed, need the learned Magistrate insist on the personal appearance of the petitioners. Till then, their personal

presence shall be exempted and they shall be permitted to appear through counsel.

5. With the above observations, this Crl.M.C is dismissed.

(R.BASANT, JUDGE)

rtr/-